

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NOS.4848 OF 1996

WITH

FIRST APPEAL NOS.4849, 4850, 4851, 4852, 4853,
4854 AND 4855 OF 1996

WITH

CIVIL APPLICATION NOS.9905 TO 9911 OF 1996

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

DEFENCE ESTATE OFFICER

Versus

HARI MEVA RABARI

Appearance:

MR AKSHAY H. MENTA, Senior Central Govt. Standing
Counsel for Appellant
MR VIPUL S MODI for Respondent No. 1
MR ND GOHIL, AGP, for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.C.PATEL

Date of decision: 14/12/2000

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. These are appeals under section 54 of the Land Acquisition Act read with section 96, CPC, challenging the judgement and awards of the Reference Court under section 18 of the said Act, at the instance of the Acquiring Body. The lands in question were acquired for the purpose of construction of Deesa Airfield, situated in village Chekara (and other contiguous villages).

2. The award of the Land Acquisition Officer under section 11 of the said Act was not acceptable to the original land holders, who preferred references under section 18 of the said Act which came to be decided by the Reference Court by the impugned judgement and awards. The Reference Court, after appreciating the evidentiary material on record, determined the market value of the lands at Rs.7/- per square meter for irrigated lands and Rs.6/- per square meter for non-irrigated lands, and awarded additional statutory benefit such as solatium, interest, etc. as per law. It is this common judgement and awards which are the subject matter of the present appeals.

3. When these matters were taken up for hearing, our attention was drawn to the fact that different first appeals were dealt with by this court at different points of time dealing with acquisitions for the very same project, and where the notifications under section 4 of the said Act were within a close time frame.

5. A large group of such matters was decided by an earlier Bench (Coram: N.J. Pandya and A.R. Dave JJ.) in First Appeal Nos.2091/93 to 2101/93 (and the group), decided on 16th March 1996.

6. In another group of matters viz. First Appeal Nos.6255/95 to 6391/95, the decision of the earlier Bench in the aforesaid group of matters was followed by a subsequent Bench (Coram: Y.B. Bhatt & R.P. Dholakia JJ.), decided on 22nd July 1998. For the reasons given in the aforesaid two decisions the market value of the

acquired lands was determined at Rs.7/- per square meter for irrigated lands and Rs.6/- per square meter for non-irrigated lands.

7. In another group of matters viz. First Appeal Nos.133/94, 1152/94 and 1153/94, this very Bench in its judgement and order dated 9th November 2000 has followed the earlier decisions.

8. The aforesaid decisions are decisions on merits of the matter after having considered the evidentiary material on record, and in the context of the present group of matters no reason has been shown by the learned counsel for the claimants as to why the aforesaid decisions should not be followed. Even otherwise, no special fact or circumstances have been pointed out from the evidentiary material on record to justify any other figure of valuation.

9. So far as these appeals filed by the acquiring body are concerned, we find that the Reference Court has determined the market value and compensation payable on the basis of the first decision of the earlier Bench (viz. N.J. Pandya and A.R. Dave JJ. in First Appeal Nos.2091/93 to 2101/93 and the group), decided on 16th March 1996.

10. In other words, the Reference Court in the present judgement and awards impugned in the present appeals has determined the market value of the acquired lands at precisely the same figure determined by the earlier Division Bench of this Court. It is therefore not open to the appellants in these appeals to press for any further reduction. In any case, learned counsel for the appellants in this group of appeals states that no further reduction would be justified on the basis of the evidentiary material on record.

11. Accordingly we find and hold that the market value of the lands under acquisition in the instant group of cases, as determined by the Reference Court, is eminently justified and does not require interference by way of the present appeals.

12. We may also note here only by way of confirmation of our findings recorded herein, that the said decision (which we have relied upon herein and discussed earlier) was challenged before the Supreme Court by the Union of India by filing a group of SLPs which came to be numbered as Special Leave to Appeal (Civil) Nos.18183 to 18463 of 1997 (and others in the same group of SLPs). The

Supreme Court issued notice to the opponents therein, i.e. the respondents in the First Appeals in the aforesaid decision, and after hearing both sides dismissed the aforesaid SLPs, by its order dated 5th January 1998. A certified copy of the said order of the Supreme Court was made available to the earlier Bench as recorded in that decision. Thus, we find that by the dismissal of the said SLPs, the said decision has been confirmed by the Supreme Court.

13. However, one contention raised by the learned counsel for the respondent requires to be accepted. In this context, it was submitted that the Reference Court has directed a deduction of 5% from the compensation allowable, in case the acquired lands happened to be new tenure lands. It is by now well settled law laid down by the Supreme Court (that no such deduction is permissible) in the case of State of Maharashtra Vs. Babu Govind, reported in AIR 1996 SC page 904, which decision has also been followed by this Court in the case of Deputy General Manager, ONGC Vs. Chaturji Lalaji, reported in 1998(1) GLR page 130. This position is not contested by learned counsel for the appellant. Therefore, this deduction of 5% as directed by the Reference Court is quashed and set aside. Accordingly we direct that there shall be no such deduction.

14. We may only note for the purpose of record that the two earlier decisions referred to hereinabove also contain directions to the Collector to make a factual inquiry as to the date of taking possession in case there is any controversy in this regard, for the purpose of computation of additional compensation under section 23(1-A) and computation of interest under section 28 of the said Act. Similarly the Collector shall follow those directions mutatis mutandis in case there is a factual controversy in the instant cases.

15. It is clarified that the land holders-original claimants shall be entitled to solatium at the rate of 30% of the amount of compensation at the rate determined by us hereinabove, as also additional compensation under section 23(1-A) of the Act and further interest under section 28 of the said Act.

16. The impugned judgement and awards are consequently modified to the aforesaid extent.

17. No other contention is raised.

18. Accordingly these appeals are dismissed with no

order as to costs. Decree accordingly.

19. Since the above appeals have been disposed of by the present judgement and order, the above civil applications do not survive and are accordingly disposed of.

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